IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.409 OF 2007
IN
APPEAL FROM ORDER NO.280 OF 2007
FROM
NOTICE OF MOTION NO.2097 OF 2005
IN
SUIT NO.2367 OF 2006

Rupali Narinder Sain Mehta ..Applicant.

V/s.

Smt.Tina Narinder Sain Mehta ..Respondent.

Mr.Zubin Kamdin with Farzana Behram Kamdin & Vandana Tiwari i/b.M/s.FZB & Associates for applicant.

Mr.Parag Kabadi with Ms.Falguni i/b. Doifode Associates for respondent.

CORAM : ABHAY S.OKA, J.

DATED : 11th APRIL, 2007.

P.C. :-

. Heard the learned counsel appearing for the applicant. Prayer is for stay of the impugned order dated 12th March, 2007. The operative part of the impugned order reads thus :-

1) The defendant is restrained by temporary order of injunction of this hon'ble court by using the said gift deed dated 29/7/2004 from entering her name as a member / joint member of the society, in respect of the suit share and suit flat, until disposal of the suit.

2) The defendant is restrained by order of injunction from entering or disturbing quiet

and peaceful possession of the plaintiff in respect of the suit flat, until disposal of this suit and subject to any order passed by the Hon'ble High Court in High Court Suit No.1348 of 2005.

3) In the facts and circumstances, parties to bear their own cost.

4) However, hearing of the suit is expedited, to be disposed of within one year and preferably within six months from today.

2. In so far as clause No.1 is concerned, granting stay at this stage will amount to granting the final relief even before the appeal is heard. So far as clause (2) is concerned, the applicant / appellant is not affected as applicant / appellant has already filed a suit for possession. In so far as clause (4) is concerned, the learned counsel appearing for the applicant / appellant submitted that the applicant had taken out a separate Notice of Motion praying for stay of the present suit under section 10 of the Civil Procedure Code, 1908. The said notice of motion has been rejected by a separate order. He stated that the applicant is adopting appropriate remedy for challenging that order. He submitted that if the direction of the trial Court for disposal of the suit within a time bound schedule is not stayed, the remedy which he intends to adopt for challenging the order refusing to grant stay may become infructuous.

3. The trial Court has passed an order directing expeditious disposal of the suit. In my view, such direction cannot be stayed, as no litigant has a vested right to delay any legal proceedings.

4. Therefore, the prayer for stay of clause (4) of the impugned order is rejected.

5. Notwithstanding the rejection of the prayer for stay, it is obvious that it will be always open for the applicant / appellant to apply for stay of the suit in the proceedings which may be adopted for challenging the order passed by the trial Court by which an application under section 10 of the Code has been rejected. If such a prayer is made, it will be considered on its own merits.

6. Subject to what is stated above, the Civil Application is rejected.

(ABHAY S. OKA, J.)